



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

████████████████████  
████████████████  
████████████████

**DECISION**  
Case #: PBT - 206658

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 26, 2022, under Wis. Admin. Code, sec. HA 3.03, to review a decision by the DHS Bureau of Enrollment Policy And Systems regarding PBT, a hearing was held on December 15, 2022, by telephone.

The issue for determination is whether the agency correctly denied PEBT benefits for the children █████ and █████ for the period from September 2021 through January 2022. .

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

████████████████████  
██████████████  
██████████████

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Daneal Morris

DHS Bureau of Enrollment Policy And Systems  
1 West Wilson St  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Brown County.

2. From September 2021 to annuary 2022, petitioner’s child [REDACTED] attended school at the [REDACTED].
3. From September 2021 to January 2022, petitioner’s child [REDACTED] attended school at [REDACTED].
4. Neither the [REDACTED] nor the [REDACTED] participated in the National School Lunch Program during the 2021-2022 school year.
5. The school districts for the children and [REDACTED] denied the request for PEBT for the period from September 2021 to January 2022 because the children “voluntarily enrolled in virtual school.”

## DISCUSSION

Pandemic Electronic Benefit Transfer (PEBT) is part of the U.S. government response to the COVID-19 pandemic. The Families First Coronavirus Response Act of 2020 (PL 116–127), as amended by the Continuing Appropriations Act 2021 and Other Extensions Act (PL 116-159), the Consolidated Appropriations Act 2021 (PL 116-260), and the American Rescue Plan Act of 2021 (PL 117-2) provides the Secretary of Agriculture authority to approve state agency plans to administer PEBT

Wisconsin’s PEBT program was created under this new federal authorization in response to the COVID19 pandemic and the recognized need to provide nutrition to Wisconsin children who would normally receive free and reduced-price school lunch as intended by the new federal law. Wisconsin’s plan for administering the program was approved by the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) on February 8, 2021. The plan can be found at <https://fnsprod.azureedge.net/sites/default/files/resource-files/Wisconsin-PEBT-SY-20-21-planapproved.pdf>. The manual for the program is at <https://www.dhs.wisconsin.gov/covid-19/forwardhealthpebt.htm>.

The PEBT program provides EBT benefits to purchase food to children whose schools are closed and who are already enrolled in the federal free and reduced-price lunch program. The approval memo from the USDA states: “Children are eligible if they would have received free or reduced price meals at their schools through the National School Lunch Program (NSLP) if not for the closure or reduced attendance or hours of their schools for a period of at least 5 consecutive days.”

The state plan sets for the criteria to determine whether a child is eligible. A child is eligible for PEBT benefits if two conditions are met:

1. The child would be eligible for free or reduced-price meals if the National School Lunch Program and School Breakfast Program were operating normally. This includes children who are:
  - a. directly certified or determined “other source categorically eligible” for SY 2020-2021, or
  - b. certified through submission of a household application processed by the child’s school district for SY2020-2021, or
  - c. enrolled in a Community Eligibility Provision school or a school operating under Provisions 2 or 3, or
  - d. directly certified, determined other source categorically eligible, or certified by application in SY 2019-2020 and the school district has not made a new school meal eligibility determination for the child in SY 2020- 2021.
2. The child does not receive free or reduced-price meals at the school because the school is closed or has been operating with reduced attendance or hours for at least 5 consecutive days in the current school year. Once the minimum 5 consecutive day

threshold is met, children are eligible to receive PEBT benefits for closures or reductions in hours due to COVID-19.

State Plan for Pandemic EBT: Children in School Year 2020-2021, FNS, Child Nutrition Programs, SNAP.

Petitioner testified that in September 2021 she enrolled the children [REDACTED] and [REDACTED] in virtual school voluntarily as a personal choice because she has a child with health problems and was concerned that if the younger children went to school, they could be exposed to COVID19 and cause the older child to become ill while no vaccine was available for her. She sent the children back to in person school in January 2022 and testified that the children received PEBT benefits for the months that they did attend in-person school.

One criterion for eligibility for PEBT is eligibility for free or reduced price lunch through the National School Lunch Program. The children cannot be eligible if their school does not participate. It is undisputed that during the fall of 2021 these children's schools were 100 percent online and could not and did not participate in the National School Lunch Program. Petitioner's choice to enroll her children in these virtual schools may have been reasonable based on her family's personal circumstances, however, regardless of the reason, there are no legal grounds for giving PEBT benefits for periods of online learning in schools who did not participate in the National School Lunch Program.

### CONCLUSIONS OF LAW

The agency correctly denied PEBT benefits for the children [REDACTED] and [REDACTED] for the period from September 2021 to January 2022 because they were enrolled in virtual schools that were not eligible for National School Lunch Program participation.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

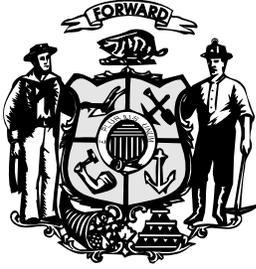
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of February, 2023



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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 7, 2023.

Dhs Bureau of Enrollment Policy And Systems